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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,529	12/08/2003	Fred M. Feinsod	8629/1(a)	2988

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EXAMINER

CONLEY, FREDRICK C

ART UNIT PAPER NUMBER

3673

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/730,529

Applicant(s)

FEINSOD, FRED M.

Examiner

FREDRICK C CONLEY

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 April 2005.  
2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,4,6,8-12,14,15 and 17-19 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☒ Claim(s) 10-12,14,15 and 17-19 is/are allowed.  
6) ☒ Claim(s) 1,3,4,6 and 8 is/are rejected.  
7) ☒ Claim(s) 9 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

***Response to Amendment***

The indicated allowability of claims 5 and 16 are withdrawn in view of the newly discovered reference(s) to Trevino and Wang. Rejections based on the newly cited reference(s) follow. The Examiner regrets any inconvenience.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-4, 6, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 6,067,678 to Trevino.

Claim 1, Trevino discloses a mattress assembly comprising:  
a mattress having top and bottom surfaces (fig. 3), and opposing lateral sides,  
raised bolsters 236 on the top surface of the mattress having lateral surfaces forming  
portions of the sides of the mattress: and

a plurality of pockets (72,74) within the mattress having portions recessed into  
the lateral surfaces of the bolsters. With regards to the pockets being employed as  
hand grips, a recitation of the intended use of the claimed invention must result in a  
structural difference between the claimed invention and the prior art in order to  
patentably distinguish the claimed invention from the prior art. If the prior art structure is  
capable of performing the intended use, then it meets the claim. In a claim drawn to a  
process of making, the intended use must result in a manipulative difference as

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compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963). Without further structure the pockets taught by Trevino would inherently function just as well as hand grips to the degree that the Applicant's recited recessed portions function as hand grips.

Claim 3, wherein the bolsters are laterally adjacent to a patient's head on the mattress.

Claim 4, wherein the bolsters are laterally adjacent to a patient's legs on the mattress.

Claim 6, wherein a first pair of bolsters laterally adjacent to a patient's head on the mattress; and

a second pair of bolsters laterally adjacent to a patient's legs on the mattress, with gaps defined by concave surfaces between the first and second pairs of bolsters along the midsections of the

mattress. With regards to the Applicant's recitation "to facilitate ingress and egress by a patient, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963). Furthermore, the gaps taught by Trevino would inherently facilitate the ingress and egress of a patient to the degree that the Applicant's gaps facilitate the ingress and egress of a patient.

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Claim 8, further comprising a bed frame 202 supporting the mattress; and a strap250 extending between the hand supports and the bottom of the mattress and can be attached to each other via Velcro beneath the bed frame.

Claims 1 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,515,549 to Wang.

Claim 1, Wang discloses a mattress assembly comprising:  
a panel 12 having top and bottom surfaces (fig. 3), and opposing lateral sides,  
and a plurality of hand supports within the panel with hand grips 22 in the sides of the panel. A mattress is interpreted as a rectangular pad of heavy cloth thus the panel of Wang clearly meets the Applicant's recitation of a mattress.

Claim 4, wherein the bolsters are laterally adjacent to a patient's legs on the mattress.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 3-4, 6, and 8 have been considered but are moot in view of the new ground(s) of rejection.

***Allowable Subject Matter***

Claims 10-12, 14-15, and 17-19 are allowed.

Claim 9 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is an examiner's statement of reasons for allowance:

The prior art of record does not teach nor does any combination thereof fairly suggest hand supports having a horizontal base extending across the bottom of the mattress, vertical members extending upward from the horizontal base at side of the mattress, and hand grips in the vertical members recessed into the sides of the mattress. The combination of elements as set forth in the claims is not shown by the prior art, and in particular the features as set forth above

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."


**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FREDRICK C CONLEY whose telephone number is 571-272-7040. The examiner can normally be reached on M-TH.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HEATHER SHACKELFORD can be reached on 571-272-7049. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FC

  
ALISON PICKARD  
PRIMARY EXAMINER